

The 7th May, 1986

No. 9/7/86-6 Lab./3348.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of the (i) Haryana Roadways, Bhiwani (ii) Transport Commissioner, Haryana, Chandigarh.—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 36 of 1985

between

SHRI SUBHASH CHANDER, WORKMAN AND THE MANAGEMENT OF THE (i) HARYANA ROADWAYS, BHIWANI (ii) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

Shri S.N. Vats A. R. for the workman.

Shri Vijay Vir Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Subhash Chander and the management of the (i) Haryana Roadways, Bhiwani (ii) Transport Commissioner, Haryana, Chandigarh, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 10473-79, dated 15th March, 1985:—

Whether the termination of services of Shri Subhash Chander, is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Assistant Fitter on 8th November, 1982 but the respondent choose to terminate his services unlawfully with effect from 30th May, 1984 in flagrant disregard of the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, employment of the petitioner as alleged is admitted. The spinal plea put forth on behalf of the respondent was that the services of the petitioner were terminated for non-renewal of contract of employment and as such, provisions of section 25F are not attracted, because termination of the petitioner is covered under sub-clause (bb) of section 2(oo) of the said Act.

4. On the pleadings of the parties, the following issues were settled for decision by me on 16th August, 1985:—

Whether the termination of services of Shri Subhash Chander is justified and in order? If not, to what relief is he entitled?

5. The petitioner himself appeared as WW-1 and the respondent examined MW-1 Shri K.S. Ahlawat Traffic Manager, MW-2 Shri Ran Singh, Clerk.

6. Heard.

7. The petitioner made a statement completely in corroboration of his claim. The respondent to dislodge the claim of the petitioner examined Shri K.S. Ahlawat as MW-1, who stated that the petitioner was employed as a daily wager with effect from 8th November, 1982 and that his order of appointment used to be issued every month, copies of the same are Ex. M-2 to M-5. He further stated that the wages of the daily wages are fixed as per the rates announced by the Deputy Commissioner of the district.

8. Employment of the petitioner on 8th November, 1982 is not denied by the respondent and so, his termination on 30th May, 1984. That would mean that the petitioner had put in more than one year of continuous service with the respondent meaning thereby that he had actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. The learned Authorised Representative of the respondent Shri Singh tried to cover the case of the petitioner under the amended definition of the term "retrenchment" as given in sub-clause (bb) of section 2 (oo) of the said Act. In my opinion, the contention is misleading. Simply, because the respondent has been passing order of appointment of the petitioner every month would not go to show that the petitioner was party to the same. Passing the order of appointment every month does not mean that there was any contract of employment for a fixed period as argued by Shri Singh. It seems that these orders of appointment in dribblets were passed by the respondent under mistaken impression

that in this way, the respondent can by pass the provisions of the said Act. This practice of making appointment on adhoc basis in the name of daily wages or in any other name has come under scathing observations from the Hon'ble Supreme Court of India in a recent authority reported in 1985 *Lab.I. C. 1733 between H. D. Singh and Reserve Bank of India*. So, there is no scope for controversy that the order of termination passed against the petitioner squarely falls within the ambit of term 'retrenchment', as defined in section 2 (oo) of the said Act and since no compliance of section 25F of the said Act was made by the respondent, the order of termination cannot be sustained and so, the same is set aside. The petitioner is ordered to be reinstated with continuity of service and full back wages. Full back wages have been awarded because the petitioner raised the demand notice with the Labour Department within less than one month of his termination. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 20th March, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

Endst. No. 36-85/541, dated 4th April, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sirsa.

The 12th May, 1986

No. 9/8/86-6Lab/3577.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s S. G. Steel Pvt. Ltd., Plot No. 6, Sector 4, Ballabgarh.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 329 of 1984

between

SHRI BHAGWAN SHAH, WORKMAN AND THE MANAGEMENT OF M/S S. G. STEEL
PVT. LTD., PLOT NO. 6, SECTOR 4, BALLABGARH

Present :

Shri Manohar Lal, for the workman.
Shri A. K. Sharma, for the management.

AWARD

This industrial dispute between the workman Shri Bhagwan Shah and the respondent-management of M/s. S. G. Steel Pvt. Ltd., Plot No. 4, Ballabgarh has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/31920—25 dated 28th August, 1984 under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Bhagwan Shah was justified and in order ?
If not, to what relief is he entitled ?

The parties have settled their dispute. According the statement of representative of parties, the workman has settled his dispute, Photo copy of the settlement is Ex. M-1. He has received Rs. 5,000 in full and final settlement of all his claims, Photo copy of the receipt is Ex. M-2. He has no right of reinstatement/re-employment with the management.

In view of the above settlement, the award is given that the dispute has been fully settled.

Dated the 21st March, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 965, dated the 17th April, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Govt. Haryana, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 28th April, 1986

No. 9/6/86-6 Lab./3217.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workmen and the management of Controller Printing and Stationery, Haryana, Chandigarh (ii) Haryana Government Printing Press, Panchkula.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT
AMBALA

Reference No. 79 of 1985

SHRI JOGA RAM, WORKMAN AND THE MANAGEMENT OF THE CONTROLLER,
PRINTING & STATIONERY, HARYANA, CHANDIGARH. (ii) HARYANA GOVERNMENT
PRINTING PRESS, PANCHKULA.

Present :

Shri Rajeshwar Nath for workman.
Shri D.S. Benewal for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred by clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Joga Ram and Controller, Printing & Stationery, Haryana, Chandigarh etc. to this Court. The terms of the reference are as under :—

“Whether the termination of services of Shri Joga Ram, workman was justified and correct, if not, to what relief is he entitled ?”

Shri Joga Ram through his demand notice alleged that he was working as a Labourer in the respondent management since 1972. In August 1975 he fell ill and he remained ill upto 5th March, 1976. He despatched leave application but his leave was not sanctioned. Ultimately, his services were terminated on 6th March, 1976 when he reported for duty along with Medical Certificate he was informed that his services have been terminated. He further alleged that termination of his service is most unjust and against the cannons of justice. He prayed for his reinstatement with continuity in service and with full back wages etc.

Respondent-management contested the dispute and contended that in fact applicant workman was an employee of the respondent-management. He joined service of respondent-management on 3rd January, 1974 and thereafter, he absented himself from office w.e.f. 26th August, 1975 without any leave or permission. Application of workman dated 10th September, 1975 along with an out door ticket No. 8842 dated 26th August, 1975 was received for grant of leave up till 20th September, 1975. Thereafter, Shri Joga Ram was directed to join his duty but he failed to do so. Ultimately, he was charge-sheeted under rule 7 of punishment and appeal rules 1952,—vide letter dated 30th December, 1975 but this registered letter received un-delivered in the office of management with the report that the whereabouts of applicant are not known. In other words the workman is missing from his house, so the registered letter was returned un-delivered. Thereafter, the management got published charge-sheet on 1st February, 1976 but in spite of that the workman did not report on duty. Thus his services were terminated—vide office order No. 15722, dated 5th March, 1976 after affording him full opportunity. It was also contended that Shri Joga Ram never submitted any Medical Certificate. Services of Shri Joga Ram were governed by the Department service condition rule and Haryana State Civil Services Rule. It was also contended that on 27th February, 1984 Deputy Labour Commissioner got the compromise of parties effected Shri R.J. Ambwany was not competent to execute the compromise. So workman could not be taken in service after obtaining the opinion of the L.R.

Shri Joga Ram filed replicati on through which he controverted the allegations of the respondent-management.

On the pleadings of the parties the following issues were framed for the just decision of this dispute. :—
Issues—

- (1) Whether termination order regarding service of Shri Joga Ram, dated 5th March, 1976, is justified? if not its effect? OPM
- (2) Relief.

I have heard Shri Rajeshwar Nath, authorised representative of Shri Joga Ram, workman and Shri D.S. Benewal for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under.

Issue No. 1.—Onus of this issue was upon the respondent-management and it was to justify its orders dated 5th March, 1976 regarding termination of services of Shri Joga Ram. Management in support of its case examined Shri Siri Chand as MW-1. He stated that Joga Ram was appointed on 3rd January, 1974 as a Labourer and he was posted in Panchkulla press on 26th August, 1975. Joga Ram absented without his leave sanctioned or without seeking any permission to leave Headquarter. On 13th October, 1975 a letter was written to Joga Ram calling him on duty but Shri Joga Ram never reported on duty. Subsequently, one more letter was written on 14th November, 1975 but of no avail. Copies of these letters are Ex-M-1 and Ex-M-2 after one month application along with an out door ticket were received on 10th September, 1975 in which Shri Joga Ram made prayer that he may be granted leave upto 20th September, 1975. Photo stat copies of these documents are Ex-M-3 and M-4. But Shri Joga Ram did not report for duty. Ultimately he was charge-sheeted being absentee on 30th December, 1975 it was despatched through registered cover the postman reported that Shri Joga Ram is missing from his house thereafter the publications were got made in Hindustan Times and National Herald papers which are Ex-M7 and M-8,—*vide* these papers it was made known to Joga Ram that he should report on duty within 15 days in the absence of the same his services will be dispensed with on account of he being absent from office. In spite of these publication Joga Ram did not report on duty which resulted in termination of his services.

Joga Ram appeared as AW-1. He stated that he neither got returned the registered A.D. of the respondent. Nor he came to know about the notice of termination in Hindi and English papers. In fact he was ill, so he remained absent. He further stated that when he came in the office of management he submitted medical certificate but that was not accepted.

In view of the above evidence I am of the opinion that the conduct and action by the respondent-management is proper and fair on the other hand the conduct of the workman is most un-desirable first of all he left the office without getting any leave sanctioned, secondly, if he had fallen ill it was his duty to have despatched his application along with medical certificate and should have given his correct address. It was also his duty that he should have despatched some responsible members of his family to the management to inform the later regarding his illness but no such step was taken by him. When Joga Ram remained ill for a long period and he did not turn up at that time the respondent-management despatched two letters Ex-M-1 and Ex-M-2,—*vide* which the management asked Joga Ram to report on duty but he failed to do so. Again respondent despatched charge-sheet through registered cover but that was also received un-delivered and ultimately the publication was got made in Hindi and English papers in spite of, that Joga Ram failed to report on duty. This shows that Joga Ram remained absent from 26th August, 1975 to 6th March, 1976. Joga Ram did not submit medical certificate to the department. So the department after observing proper procedure and charge-sheeting the workman under rule 7 of Punishment and Appeal Rules, 1952 dispensed with his services as per terms and conditions of his service, so the order passed by the management regarding termination of services of Shri Joga Ram is according to law and correct. So this issue is decided, in favour of management, against the workman.

Issue No. 2.—For the fore-going reasons on the basis of my findings on issue No. 1 I hold that Joga Ram remained will fully absent from his duties without any information and without getting any leave sanctioned. So respondent retrenched him being absentee, so order of the respondent is just and tenable. I pass award regarding controversy between the parties accordingly.

Dated, the 10th March, 1986.

V.P. CHAUDHARY,
 Presiding Officer,
 Labour Court, Ambala.

Endst. No. 798, dated 18th March, 1986.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V.P. CHAUDHARY,
 Presiding Officer,
 Labour Court, Ambala.

KULWANT SINGH,
 Secretary to Government, Haryana,
 Labour and Employment Department.